

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LISA R. SMITH)	
Claimant)	
VS.)	
)	Docket No. 202,412
BANK IV-FOURTH FINANCIAL CORPORATION)	
Respondent)	
AND)	
)	
CHUBB GROUP OF INSURANCE COMPANIES)	
Insurance Carrier)	

LISA R. SMITH)	
Claimant)	
VS.)	
)	Docket No. 202,604
CHECKERS FOODS)	
Respondent)	
AND)	
)	
FIREMAN'S FUND INSURANCE)	
Insurance Carrier)	

ORDER

Claimant appeals from an Award entered by Administrative Law Judge Nelsonna Potts Barnes on March 16, 1998. The Appeals Board heard oral argument October 9, 1998.

APPEARANCES

Timothy J. King of Wichita, Kansas, appeared on behalf of claimant. Kirby A. Vernon of Wichita, Kansas, appeared on behalf of respondent Bank IV and its insurance carrier. Richard A. Boeckman of Great Bend, Kansas, appeared on behalf of respondent Checkers Foods and its insurance carrier.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

In Docket No. 202,412, claimant alleges she suffered bilateral carpal tunnel syndrome arising out of and in the course of her employment with the Fourth Financial Corporation (Bank IV). In Docket No. 202,604, she claims she suffered bilateral carpal tunnel syndrome from her work with respondent Checkers Foods. The Administrative Law Judge found claimant had proven accidental injury arising out of and in the course of employment for both respondents, but also found that in each case claimant failed to establish she suffered permanent impairment or disability because she left both employments for reasons other than her injury and no restrictions were imposed at the time she worked for either employer.

Claimant appeals and the issues on appeal are as follows:

1. Did claimant have a permanent injury arising out of and in the course of her employment with either employer?
2. If so, what is the nature and extent of that disability?
3. Is claimant limited to an award for medical treatment because she was not disabled for one week from earning full wages?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board finds and concludes claimant has not proven she suffered permanent impairment or disability arising out of and in the course of employment for either respondent, and the Award should be affirmed.

Findings of Fact

1. Claimant began working for Bank IV on March 14, 1994, as a part-time file clerk. As a file clerk, she pulled old files apart and consolidated them into new files on a part-time basis, five hours per day.
2. She began having numbness and tingling in her hands bilaterally during the summer of 1994, while working for Bank IV, and went to Dr. James A. Stanga for treatment. He prescribed anti-inflammatory medication but imposed no restrictions. A nurse for Bank IV

suggested claimant should quit doing repetitive work, but no changes were made and claimant continued with her regular duties for Bank IV. Claimant did not miss any work due to problems with her upper extremities while working for Bank IV.

3. Instead, claimant voluntarily quit her employment for Bank IV on October 28, 1994. Claimant did so in order to spend more time with her children and not because of problems she was having with her hands.

4. At the end of October 1994, three days before she quit her employment with Bank IV, claimant began working part-time for respondent Checkers. She worked there until April 26, 1995. Her duties included cake decorating, and squeezing the pastry bag caused a flare-up in symptoms similar to what she experienced at Bank IV.

5. Claimant went again to Dr. Stanga while she was working for Checkers. Dr. Stanga did not recommend restrictions or take claimant off work.

6. Claimant left her employment for Checkers but, as with Bank IV, there is no indication she left this employment because of injury. In fact, she next went to work for A&P in California doing the same kind of work she had done at Checkers. She worked for A&P from March 1996 until November 1996 doing cake decorating. Her symptoms worsened while she worked for A&P and ultimately claimant underwent carpal tunnel releases on both the right and left in November and December 1996.

7. Dr. Philip R. Mills testified claimant has a 12 percent permanent partial disability as a result of the carpal tunnel syndrome and surgery, but he gave no opinion as to the cause or causes of the syndrome.

Conclusions of Law

1. Claimant has the burden of proving her right to an award of compensation and of proving the various conditions on which that right depends. K.S.A. 44-501(a).

2. Claimant has not proven she suffered permanent impairment or disability arising out of and in the course of her employment with either respondent.

3. Because of the above ruling, it is not necessary to determine whether claimant is limited to medical expenses because of provisions of K.S.A. 44-501(c) (Furse) which apply when the injury does not disable for one week from earning full wages.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Nelsonna Potts Barnes on March 16, 1998, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Timothy J. King, Wichita, KS
Kirby A. Vernon, Wichita, KS
Richard A. Boeckman, Great Bend, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director